

EARNEST MONEY CONTRACT

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract, provided Buyer must deliver the Earnest Money to Seller before the Earnest Money Deadline provided in section A.1. for this contract to be effective. If the Earnest Money is paid by check and payment on presentation is refused, Buyer is in default.

Seller: **San Antonio Development Agency, a Texas Local Governmental Entity, also known as the Urban Renewal Agency of the City of San Antonio, by and through its Board of Commissioners.**

Address: 1400 S. Flores Street, San Antonio, Bexar County, Texas 78204

Seller's Broker: None

Buyer:

Address:

Property:

Total Purchase Price:

Earnest Money:

Title Company:

Buyer's Liquidated Damages: \$500.

Seller's Additional Liquidated Damages: \$500.

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: Ten (10) business days from the date of Seller's written notification to Buyer notifying of the acceptance of Buyer's bid.

2. Delivery of Title Commitment (if any): Ten (10) days after the Effective Date.
3. Delivery of Survey (if any): Ten (10) days after the Effective Date.
4. Delivery of legible copies of instruments referenced in the Title Commitment (if any): Five (5) days after request.
5. Delivery of Title Objections: Twenty (20) days after the Effective Date.
6. Delivery of Seller's records (if any) as specified in **Exhibit B**: Five (5) days after the Effective Date.
7. End of Inspection Period: Thirty (30) days after the Effective Date.
8. Closing Date: Sixty (60) days after the Effective Date or sooner.

B. Closing Documents

1. At closing, Seller will deliver the following items:
 - Special Warranty Deed
 - Evidence of Seller's authority to close this transaction
 - Notices, statements, and certificates as specified in **Exhibit C**
2. At closing, Buyer will deliver the following: Evidence of Buyer's authority to consummate this transaction

The documents listed in this section B are collectively known as the "Closing Documents."

C. Exhibits

The following are attached to and are a part of this contract:

- Exhibit A—Representations; Environmental Matters
- Exhibit B—Seller's Records pertaining to the Property
- Exhibit C—Notices, Statements, and Certificates

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

E. [Reserved]**F. Title and Survey**

1. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.
2. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.
3. *Survey.* Buyer is advised that it should obtain a current survey of the Property.
4. *Delivery of Title Commitment, Survey, and Legible Copies.* Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.2.; a Survey, if any, in Seller's possession by the deadline stated in section A.3.; and legible copies of the instruments referenced in the Title Commitment by the deadline stated in section A.4.
5. *Title Objections.* Buyer must notify Seller of any objections to Property title ("Title Objections") by the deadline stated in A.5. If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must cure the Title Objections that Seller has agreed to cure.

G. Inspection Period

1. *Review of Seller's Records.* Seller will deliver to Buyer copies of Seller's records specified in **Exhibit C**, or otherwise make those records available for Buyer's review, by the deadline stated in section A.6.
2. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:
 - a. Buyer may not interfere in any material manner with existing operations or

occupants of the Property;

- b. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;
- c. if the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;
- d. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days after their preparation or receipt; and
- e. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. If Buyer does not notify Seller of Buyer's termination of the contract before the end of the Inspection Period, Buyer waives the right to terminate this contract pursuant to this provision.

4. *Buyer's Indemnity and Release of Seller*

- a. *INDEMNITY.* Buyer will INDEMNIFY, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection. The obligations of Buyer under this provision will survive termination of this contract and closing.
- b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

H. Representations

The Seller's representations as stated in **Exhibit A** must be true and correct on the Closing Date.

I. Condition of the Property until Closing; No Recording of Contract

1. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; and (b) operate the Property in the same manner as it was operated on the Effective Date.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty

before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under property insurance policies, if any, covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property.

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken, and (d) no change in the Purchase Price will be made.

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that involves or directly affects the Property.

5. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

J. Termination

1. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days after receipt of Buyer's termination notice, deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer authorizes the Seller to keep the Earnest Money.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has

made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract and those obligations that survive termination under the express terms of this contract.

K. Closing

1. *Closing.* This transaction will close on the Closing Date. At closing, the following will occur:
 - a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
 - b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Seller in funds acceptable to Seller. The Earnest Money will be applied to the Purchase Price.
 - c. *Recording; Copies.* Buyer will record the deed and the other necessary Closing Documents.
 - d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
 - e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller if the sale is seller-financed.
2. *Transaction Costs*
 - a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by the Title Company; costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; the costs to deliver copies of the instruments described in section A.6.; and Seller's expenses and its attorney's fees.
 - b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by the Title Company; the costs to obtain, deliver, and record all documents (including the deed), other than those to be recorded at Seller's expense; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender, if any; and Buyer's expenses and attorney's fees.

- c. *Ad Valorem Taxes.* As applicable, ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes, if any, will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known.
- d. *Post-closing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make post-closing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. *Seller's Default.* If Seller fails to substantially perform any of its obligations under this contract or if any of Seller's material representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and have the Earnest Money, less \$100 as described above, returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.
- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be "AS IS."

2. *Buyer's Default.* If Buyer fails to substantially perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the right to keep the Earnest Money. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within ten days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.
- b. *Specific Performance.* Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be "AS IS."

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

4. *Attorney's Fees.* If either party retains an attorney to enforce or construe this contract in a court of law with competent jurisdiction, the party prevailing in such litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.
4. *Prohibition of Assignment.* Buyer may not assign this contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.
5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.
6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is mandatory in Bexar County. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.
7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.
8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.
9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.
11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.
12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.
13. *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. *Waiver of Consumer Rights.* BUYER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 *ET SEQ.* OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.

SELLER: San Antonio Development Agency, also known as the Urban Renewal Agency of the City of San Antonio, by and through its Board of Commissioners.

By: _____

Date:_____

BUYER:

By: _____

Date:_____

RECEIPT OF EARNEST MONEY

RE: *[property]*

Title Company acknowledges receipt of Earnest Money in the amount of \$_____ from _____, Buyer, and a copy of this contract executed by both Buyer and Seller.

Title Company:

By: _____

Date: _____

[Note: page 11 is Receipt of Earnest Money]

Exhibit A

A. Seller's Representations to Buyer

To Seller's actual knowledge via its executive director, Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a governmental entity duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

6. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

8. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

THIS CONTRACT IS AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT FOR THE WARRANTY OF TITLE STATED IN THE CLOSING DOCUMENTS AND SELLER'S REPRESENTATIONS TO BUYER SET FORTH IN SECTION A OF THIS EXHIBIT A.

THE PROPERTY WILL BE CONVEYED TO BUYER IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES, EXCEPT THE WARRANTY OF TITLE IN THE CLOSING DOCUMENTS, ARE DISCLAIMED.

C. Environmental Matters

AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES.** BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The provisions of sections B and C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

Exhibit B

Seller's Records

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.6.:

soil reports

environmental reports

engineering reports

prior surveys

site plans

Exhibit C

Notices, Statements, and Certificates

As applicable and as may be required to be given by Seller, the following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

Notice of deed restrictions, described in section 230.005 of the Texas Local Government Code

Seller's disclosure of the location of pipelines under the surface of unimproved property to be used for residential purposes, described in section 5.013 of the Texas Property Code

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Notice concerning the sale of single-family residential property that is subject to membership in a property owners association, described in section 5.012 of the Texas Property Code

Lead-paint warning statement, described in section 745.100 *et seq.* of title 40 of the Code of Federal Regulations